

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

V. DOLAN TRUCKING,

Employer

and

Case 20-RC-18183

TEAMSTERS LOCAL 624,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS and DISTRICT
LODGE 190, INTERNATIONAL
ASSOCIATION OF MACHINISTS¹,

Joint Petitioners

DECISION AND DIRECTION OF ELECTION

V. Dolan Trucking (the Employer) is engaged in the business of construction material hauling and operates out of its facility located in Penngrove, California. There are approximately 31 drivers and three mechanics employed at the facility. The drivers transport construction materials to sites, including road paving sites, located throughout northern California. The mechanics are responsible for maintaining and repairing the trucks driven by the drivers. At the

¹ At the April 24, 2008 hearing, the Hearing Officer granted the motion of Petitioner Teamsters Local 624, International Brotherhood of Teamsters, to amend the petition to add District Lodge 190, International Association of Machinists, as the Joint Petitioner herein. See, e.g., *St. Louis Packing Co.*, 169 NLRB 1106, 1107 (1968). I affirm the Hearing Officer's ruling that the Joint Petitioners' showing of interest was not a proper subject for litigation at the hearing. At the hearing, the Hearing Officer advised the Employer's counsel that the Region had conducted a complete administrative investigation of the showing of interest and had determined that the showing of interest was sufficient. Moreover, by letter dated April 29, 2008, in response to an April 27, 2008 letter from the Employer's counsel, I again informed Employer's counsel that the Region had conducted a complete administrative investigation of the showing of interest and had determined that the showing of interest was sufficient.

hearing, both labor organizations,² by counsel, stated their desire to jointly represent a unit consisting of the drivers and mechanics.

Although the Employer appeared at the hearing, it declined to participate and ultimately walked out when the Hearing Officer granted the motion to add District Lodge 190, International Association of Machinists as a Joint Petitioner and denied the Employer's request to adjourn the proceeding for five days based on said amendment. The Board has long held that, when an employer refuses, on reasonable request by a Board Agent, to provide information relevant to the Board's jurisdictional determination, jurisdiction will be asserted without regard to whether any jurisdictional standard is shown to be satisfied, if the record at a hearing establishes that the Board has statutory jurisdiction. *Tropicana Products*, 122 NLRB 121, 123 (1959). The Board's "statutory jurisdiction" applies when an employer's business in interstate commerce is more than "de minimis." *NLRB v. Fainblatt*, 306 U.S. 601, 606 (1930).

Roland Medley, a truck driver employed by the Employer for five years, testified that the Employer performs its services for large interstate construction companies such as Granite Construction and North Bay Construction, that Granite pays approximately \$98 per hour to the Employer for these services and that the number of hours paid by Granite exceeds 45,000 annually. In sum, the testimony establishes that the Employer annually provides services valued in excess of \$4 million to Granite Construction Company, an employer which the Board has found to meet the Board's discretionary standard for the

² Based upon the record, I find that both Teamsters Local 624, International Brotherhood of Teamsters and District Lodge 190, International Association of Machinists are organizations in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. They are, therefore, labor organizations within the meaning of Section 2(5) of the Act.

assertion of jurisdiction on a direct basis and to be engaged in commerce within the meaning of Sections 2(2), (6) and (7) of the Act. *Granite Construction Co.*, 330 NLRB 205 (1999). On this basis, I find that the Employer meets the jurisdictional standards established by the Board and is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and 2(7) of the Act, and that it would effectuate the purposes of the Act to assert jurisdiction in this case. See *J.E.L. Painting and Decorating, Inc.*, 303 NLRB 1029 (1991).

As stated above, the Joint Petitioners seek to represent a unit of drivers and mechanics employed by the Employer at its Penngrove, California facility. Both classifications are supervised by Vice-President Erik Fowler, and both are paid on an hourly basis. Both receive the same fringe benefits. The drivers' start times depend on the deliveries they are scheduled to make each day, whereas the mechanics generally work a 7:00 a.m. to 3:00 p.m. shift. Both attend the same staff and safety meetings. There is no collective-bargaining history among either classification.

It is well settled that the Act does not require that the petitioned-for unit be the only appropriate unit, the most appropriate unit, or what could become the ultimate unit; it requires only that the unit be "appropriate." See, e.g., *Overnight Transportation Co.*, 322 NLRB 723 (1996); *Dezcon, Inc.*, 295 NLRB 109 (1989); *Capital Bakers*, 168 NLRB 904 (1968). A plant-wide unit is presumptively appropriate. *Marks Oxygen Company of Alabama*, 147 NLRB 228 (1964). While a petitioner's desire in regard to unit composition and scope is relevant, it is, however, in no way dispositive, see *Airco, Inc.*, 273 NLRB 348 (1984), because a proposed bargaining unit based on an arbitrary grouping of employees will always be inappropriate. See, e.g., *Moore Business Forms, Inc.*, 204 NLRB 552

(1973); *Glosser Bros., Inc.*, 93 NLRB 1343 (1951). Additionally, the Act prohibits the Board from establishing a bargaining unit based solely on the extent of organization. *See, e.g., Motts Shop Rite of Springfield*, 182 NLRB 172 (1970). Where, however, a petitioned-for unit of employees has a community of interest that is distinct from the interests of the employees sought to be excluded from the bargaining unit, the Board holds such a unit to be an appropriate unit. *See Aerospace Corp.*, 331 NLRB 561, 562 (2000); *Ore-Ida Foods*, 313 NLRB 1016 (1994), *enfd*, 66 F.3d 328 (7th Cir. 1995). The factors the Board looks to in determining whether the employees at issue share a community of interest include: degree of functional integration; common supervision; the nature of employee skills and functions; interchangeability and contact among employees; general working conditions; and fringe benefits. *See, e.g., Overnite Transportation Co.*, 331 NLRB 662 (2000); *J.C. Penney Co.*, 328 NLRB 766 (1999); *K.G. Knitting Mills*, 320 NLRB 374 (1995); *Kendall Co.*, 184 NLRB 847 (1970).

Based upon the record, and noting that no party has objected to the appropriateness of the petitioned-for unit or produced evidence thereof, I find that the Employer's drivers and mechanics share a sufficient community of interest such that it is appropriate to include them in the same bargaining unit for purposes of collective bargaining.

CONCLUSIONS AND FINDINGS

Based upon the entire record, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is an employer as defined in Section 2(2) of the Act, is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Joint Petitioners are labor organizations within the meaning of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers and mechanics employed by the Employer at the facility located at Adobe Road and Redwood Highway, Pennngrove, California, excluding all other employees, guards, and supervisors as defined in the National Labor Relations Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **TEAMSTERS LOCAL 624, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, and DISTRICT LODGE 190, INTERNATIONAL ASSOCIATION OF MACHINISTS, JOINTLY**, or no union. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not

work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized

(overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 20, 901 Market Street, Suite 400, San Francisco, CA 94103, on or before **May 12, 2008**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,³ by mail, or by facsimile transmission at (415)356-5156. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Because the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting

³ To file the list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the "Accept" button. The user then completes a form with information such as the case name and number, attaches the document containing the election eligibility list, and clicks the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.

requirement may result in additional litigation if proper objections to the election are filed.

Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **May 19, 2008**.

The request may be filed electronically through E-Gov on the Board's web site, www.nlr.gov,⁴ but may not be filed by facsimile.

DATED AT San Francisco, California, this 5th day of May, 2008.

/s/ Joseph P. Norelli

Joseph P. Norelli, Regional Director
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

⁴ Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-Filing page the user should select the option to file documents with the **Board/Office of the Executive Secretary**.